

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FEB 15 2007

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

James A. McDevitt
United States Attorney
Eastern District of Washington
Joseph H. Harrington
Assistant United States Attorney
Post Office Box 1494
Spokane, WA 99210-1494
Telephone: (509) 353-2767

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY E. GARVER,

Defendant.

CR-06-113-WFN

PLEA AGREEMENT

Plaintiff, United States of America, by and through James A McDevitt,
United States Attorney for the Eastern District of Washington, and Joseph H.
Harrington, Assistant United States Attorney for the Eastern District of
Washington, and Defendant, ANTHONY E. GARVER, a/k/a Anthony E. Burke,
and his counsel, Christina L. Hunt, enter into the following Plea Agreement:

1. Plea and Maximum Statutory Penalty:

The Defendant agrees to plead guilty to the Indictment, dated November 8,
2006, which charges him with being in Possession of Ammunition after Having
Previously Been Committed to a Mental Institution, in violation of 18 U.S.C. §
922(g)(4). The Defendant understands this charge is a Class C felony offense that
carries a maximum statutory penalty of: not more than a ten-year term of
imprisonment; not more than a \$250,000 fine; not more than a three-year term of
supervised release; and a \$100 special penalty assessment.

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1 2. Violation of Supervised Release:

2 The Defendant understands that a violation of a condition of supervised
3 release carries an additional penalty of re-incarceration for all or part of the term
4 of supervised release, without credit for time previously served on post-release
5 supervision.

6 3. The Court is Not a Party to the Agreement:

7 The Defendant and the United States understand that the Court is not a party
8 to this Plea Agreement and may accept or reject it. The Defendant understands:
9 that sentencing is a matter solely within the discretion of the Court; that the Court
10 is under no obligation to accept any recommendations made by the United States
11 and/or by the Defendant; that the Court will obtain an independent report and
12 sentencing recommendation from the U.S. Probation Office; and that the Court
13 may, in its discretion, impose any sentence it deems appropriate up to the statutory
14 maximum penalty.

15 The Defendant acknowledges that no promises of any type have been made
16 to him regarding the sentence the Court will impose in this matter. The Defendant
17 understands that the Court is required to consider the sentencing range applicable
18 under the Sentencing Guidelines, but that the Court may depart upward or
19 downward from the range. The Defendant also understands that the Court will
20 consider all of the sentencing factors set forth in 18 U.S.C. § 3553.

21 The Defendant understands further that the Court may not accept any of the
22 parties' recommendations set forth in this Plea Agreement. The Defendant
23 understands that such a circumstance does not provide him a basis for
24 withdrawing from this Plea Agreement or for withdrawing his plea of guilty.

25 4. Waiver of Constitutional Rights:

26 The Defendant understands that by entering a plea of guilty he is knowingly
27 and voluntarily waiving certain constitutional rights, including: (a) the right to a
28 jury trial; (b) the right to see, hear and question the government's witnesses; (c)

1 the right to remain silent at trial; (d) the right to testify at trial; and (e) the right to
2 compel witnesses to testify. While the Defendant understands he is waiving
3 certain constitutional rights, he understands that he will retain the right to be
4 assisted through the sentencing process and the appellate process, if any, by an
5 attorney, who will be appointed at no cost to him if he cannot afford to hire an
6 attorney.

7 5. Elements of the Offense:

8 The Defendant acknowledges and agrees that, in order to be found guilty of
9 being in Possession of Ammunition after Having Previously Been Committed to a
10 Mental Institution, in violation of 18 U.S.C. 5 922(g)(4), as charged in the
11 Indictment, the United States would have to prove each of the following three
12 elements beyond a reasonable doubt:

13 First, on or about June 2, 2006, in the Eastern District of
14 Washington, ANTHONY E. GARVER, a/k/a Anthony E.
15 Burke, knowingly possessed ammunition, to wit:
16 approximately 80 rounds of grey-colored 7.62 x 39 mm
17 ammunition having a head stamp "WOLF" and "7.62 x 39" and
18 approximately 20 rounds of green-colored 7.62 x 39 mm
19 ammunition having a head stamp "7.62 x 39" and an
20 over/under arrow symbol;

21 Second, the ammunition had been shipped or transported in foreign
22 commerce; and

23 Third, at the time ANTHONY E. GARVER, a/k/a Anthony E. Burke
24 possessed the ammunition, he had previously been committed
25 to a mental institution, to wit: Sacred Heart Medical Center's
26 Psychiatric Center on or about August 4, 2004.

1 6. Factual Basis and Statement of Facts:

2 The Defendant acknowledges and agrees that, in proving the elements of the
3 crime to which he is pleading guilty, the United States can establish the following
4 facts beyond a reasonable doubt, that these facts constitute an adequate basis for
5 his plea of guilty; and that for sentencing purposes, neither party is precluded from
6 presenting additional facts and arguing the relevance of the facts to the Sentencing
7 Guidelines computation or to sentencing generally, unless otherwise prohibited by
8 this Plea Agreement:

9 **A. Prior Commitment to a Mental Institution**

10 The Superior Court of the State of Washington, in and for the County of
11 Spokane, entered an Order of Involuntary Treatment and Findings of Fact and
12 Conclusions of Law in support thereof, both of which are dated August 4, 2004.
13 The Order of Involuntary Treatment directed that ANTHONY E. GARVER be
14 "subject to treatment for a period not to exceed one hundred eighty days."
15 Specifically, the court ordered that ANTHONY E. GARVER be detained and
16 treated at Sacred Heart Medical Center.

17 The Order was based on the court's Findings of Fact and Conclusions of
18 Law. The court found that ANTHONY E. GARVER suffers from a mental
19 disorder, that he presents a likelihood of harm to himself and others, and that he is
20 not able to care for his mental health and safety needs in the community. At the
21 time, the court found, *inter alia*, that:

22 -[ANTHONY E. GARVER was] a minor, age 16 years (Findings, p.2);

23
24 - there is a substantial risk that physical harm will be inflicted by
25 [ANTHONY E. GARVER] upon another, as evidenced by behavior which
26 has caused such harm or which places another person or persons in
reasonable fear of sustaining such harm (Findings, II, p. 2);

27 - there is recent proof of significant loss of cognitive or volitional control.
28 [ANTHONY E. GARVER] is not receiving or would not receive if released,
such as is essential to maintain his health or safety. [ANTHONY E.

1 GARVER] is unable, because of severe deterioration of mental functioning,
2 to make a rational decision with respect to [his] treatment (Findings, II, p.3);

3 - [ANTHONY E. GARVER] is in need of further treatment that can only be
4 provided in a one hundred eighty-day commitment (Findings, IV, p.4);

5 - [two physicians * * * have analyzed [ANTHONY E. GARVER's
6 condition and either testified or were willing to testify that [ANTHONY E.
7 GARVER] has a mental disorder and presents a likelihood of serious harm
or is gravely disabled, and is in need of treatment that only can be provided
in a one hundred eighty-day commitment (Findings, VII, p.4); and

8 -Sacred Heart Medical Center * * * is, certified by the [Washington State
9 Department of Social and Health Services to provide inpatient mental health
10 evaluation and treatment services to minors (Findings, VIII, p.4).

11 **B. The Defendant Possesses Ammunition**

12 On June 2,2006, Spokane County Sheriffs Deputies responded to a
13 domestic violence complaint involving the Defendant. Deputy Mitchell contacted
14 Ms. Taldja Garver at a residence located at 17605 E. Off My Lane, Spokane,
15 Washington. When Deputy Mitchell arrived at the residence he spoke to Ms.
16 Garver, the Defendant's mother, and Ms. Dawn House, a neighbor.

17 Ms. Garver stated that the Defendant had been in her residence that day and
18 that she and the Defendant had been arguing about whether he had caused damage
19 to a neighbor's house. Ms. Garver stated that she became afraid for her life when
20 the Defendant said he would kill her, her husband Andrew, her other son Derrick,
21 and her neighbor Ms. House. According to Ms. Garver, the Defendant showed her
22 a full ammunition clip contained in a black travel bag that he had in his
23 possession. The Defendant then left the residence carrying the black travel bag.

24 The Defendant denies he told Ms. Garver that he would kill her, her
25 husband Andrew, her other son Derrick, or her neighbor Ms. Dawn House. The
26 Defendant also denies that he showed Ms. Garver the ammunition clip.

1 Deputy Mitchell also spoke with Ms. House. According to Ms. House, the
2 Defendant had indicated that he had a gun. The Defendant denies that he
3 indicated to Ms. House that he had a gun.

4 While Deputy Mitchell was speaking to Ms. Garver, the Defendant called
5 Ms. Garver's cellular telephone. Ms. Garver gave Deputy Mitchell the telephone
6 and he spoke with the Defendant. The Defendant advised Deputy Mitchell that he
7 was in the nearby woods. The Defendant agreed to come out of the woods and
8 meet with Deputy Mitchell.

9 Approximately five minutes later, the Defendant walked out of the nearby
10 woods, without the travel bag, and met with Deputy Mitchell. Deputy Mitchell,
11 who had had previous law-enforcement related contacts with the Defendant,
12 detained him by placing him in handcuffs. Deputy Mitchell advised the
13 Defendant of his Constitutional rights under *Miranda*, which the Defendant stated
14 he understood and agreed to waive. The Defendant spoke to Deputy Mitchell and
15 denied threatening to kill Ms. Garver or anyone else. The Defendant admitted
16 having possession of two, 20-round AK-47 ammunition clips in his travel bag.
17 The Defendant stated that he did not have an AK-47 rifle yet, but that he intended
18 to obtain one soon. The Defendant refused to reveal where his black travel bag
19 was at the time.

20 In addition, the Defendant stated that he disagreed with the doctors who
21 opined that he was mentally ill and that he needs medication. He stated further
22 that he refuses to take medication.

23 Deputy Mitchell placed the Defendant under arrest for Harassment
24 (domestic violence)- threatening to kill another. Deputy Mitchell transported the
25 Defendant to the Spokane County jail.

26 Thereafter, Spokane County Sheriffs Deputy Karnitz searched the woods
27 and located the black travel bag. The black travel bag contained, among other
28 items:

- 1 • a wallet with a temporary Washington State identification card in the
2 name of Anthony Edyle Burke; a photocopy of a birth certificate from
3 the State of California in the name of Anthony Edyle Burke; an
4 employee statement of earnings in the name of Anthony E. Burke
5 from the Sahara Hotel and Casino, dated May 21, 2006; and a pawn
6 shop receipt dated May 30, 2006 for the cash purchase of a GPS and a
7 Compaq Presario laptop computer;
- 8 • an assault rifle magazine loaded with 30 rounds of 7.62 x 39
9 ammunition; 51 loose rounds of grey-colored 7.62 x 39 mm
10 ammunition; and 19 loose rounds of green-colored 7.62 x 39 mm
11 ammunition having a red-colored band around the base of each round;
- 12 • three knives;
- 13 • an Eagle Explorer GPS unit; an air band transceiver; and a Radio
14 Shack police scanner; and
- 15 • a Compaq Presario laptop computer.

16 The travel bag and the items contained therein were subsequently checked into the
17 Spokane County Property room as the Defendant's property.

18 **C. Interstate Nexus of the Ammunition**

19 Rich Jessen, a Special Agent with the Bureau of Alcohol, Tobacco,
20 Firearms and Explosives, is recognized as an expert in the identification of
21 firearms and ammunition and their nexus to interstate and foreign commerce.
22 Special Agent Jessen has examined the 7.62 x 39 mm ammunition discovered in
23 the Defendant's black travel bag, including the 80 rounds of grey-colored 7.62 x
24 39 mm ammunition having a head stamp "WOLF" and "7.62 x 39" and the 20
25 rounds of green-colored 7.62 x 39 mm ammunition having a head stamp "7.62 x
26 39" and an over/under arrow symbol. He has concluded that the ammunition was
27 manufactured in Russia and that, for the 100 rounds of 7.62 x 39 ammunition
28 to have been present in the Eastern District of Washington on or about June 2,
2006, the ammunition had to have been shipped or transported in foreign
commerce.

7. Waiver of Inadmissibility of Statements:

The Defendant agrees that, if he withdraws his guilty plea, he waives the

1 inadmissibility of statements, if any, made in the course of plea discussions with
2 the United States, pursuant to Fed. R. Crim. P. 11(f). The Defendant agrees
3 further that any such inadmissible statements also include those statements made
4 at the change of plea hearing to establish facts sufficient for the Court to accept his
5 plea of guilty. The Defendant agrees that this waiver permits the United States to
6 move to introduce any such inadmissible statements in its case-in-chief.

7 8. No Additional Charges:

8 The United States Attorney for the Eastern District of Washington agrees to
9 file no additional charges against the Defendant based on information in its
10 possession at the time of this Plea Agreement and arising out of his conduct
11 involving the illegal activity charged in the Indictment, unless the Defendant
12 breaches this Plea Agreement any time before or after sentencing.

13 9. Effect of Breach:

14 The Defendant agrees if he breaches this Plea Agreement: that the
15 agreement is null and void; that he expressly waives the right to challenge the
16 initiation of additional charges against him for any criminal activity; and that the
17 United States may make derivative use of and may pursue any investigative leads
18 suggested by him.

19 10. United States Sentencing Guidelines Calculation:

20 The United States and the Defendant acknowledge that the final Sentencing
21 Guidelines calculations will be determined by the Court, with input ~~from~~^{from} the
22 United States Probation Office. The United States and the Defendant reserve the
23 right to advise the Court and the United States Probation Office about the law and
24 facts applicable to any sentencing issues.

25 (a.) *Base Offense Level:*

26 The Defendant and the United States agree that his base offense level for the
27 charge is 14. See USSG 8 2K2.1(a)(6).
28

1 (b.) *Specific Offense Characteristics:*

2 The Defendant acknowledges that the United States will seek a four-level
3 increase in his base offense level because he used or possessed the ammunition in
4 connection with another felony offense, to wit: Felony Harassment (domestic
5 violence). *See* USSG § 2K2.1 (b)(5).

6 (c.) *Acceptance of Responsibility:*

7 If the Defendant pleads guilty and demonstrates a recognition and
8 affirmative acceptance of personal responsibility for his criminal conduct,
9 provides complete and accurate information during the sentencing process, and
10 does not commit any obstructive conduct, the United States will recommend a
11 two-level reduction of his offense level for acceptance of responsibility and, if
12 applicable, a one-level reduction for timely entering a plea of guilty. U.S.S.G.
13 § 3E1.1(a) and (b).

14 The Defendant agrees to pay the \$100 mandatory special penalty assessment
15 to the Clerk of Court for the Eastern District of Washington, before sentencing,
16 and shall provide a receipt from the Clerk to the United States Attorney's Office
17 before sentencing as proof of this payment, as a condition to this recommendation
18 by the United States. *See* 18 U.S.C. § 3013. If the Defendant lacks the financial
19 resources to pay the assessment at or before sentencing, he agrees to participate in
20 the Bureau of Prison's Inmate Financial Responsibility Program in order to pay the
21 assessment.

22 The Defendant and the United States also agree that the United States may,
23 at its option and upon written notice to the Defendant, not recommend a reduction
24 for acceptance of responsibility if, prior to the imposition of sentence, he is
25 charged with or convicted of any criminal offense whatsoever and/or if he tests
26 positive for any controlled substance.

27 (d.) *Criminal History:*

28 The Defendant and the United States understand that his criminal history

1 computation will be determined by the Court, based on input from the United
2 States Probation Office and the Presentence Investigation Report. The Defendant
3 and the United States acknowledge they have made no agreement and have made
4 no representations as to the Criminal History Category within which the
5 Defendant falls.

6 11. Incarceration:

7 The Defendant and the United States acknowledge that, at sentencing, they
8 are free to make whatever sentencing recommendations they deem are appropriate.

9 12. Criminal Fine:

10 The Defendant and the United States reserve the right to make whatever
11 recommendation they believe is appropriate concerning the imposition of a
12 criminal fine.

13 13. Supervised Release:

14 The Defendant acknowledges that the United States will recommend that
15 the Court impose a three-year term of supervised release to include the following
16 special conditions, in addition to the standard conditions of supervised release: (a)
17 that the Defendant complete mental health evaluations and treatment if, and as, the
18 Probation Officer directs, that the Defendant allow reciprocal release of
19 information between his designated Probation Officer and his treatment provider,
20 and that the Defendant contribute to the cost of such evaluations and treatment
21 according to his ability; (b) that the Defendant's person, residence, office, vehicle,
22 and belongings be subject to search at the direction of his designated Probation
23 Officer; and (c) that the Defendant possess no false identification, no bomb-
24 making recipes, no copies of or excerpts from the "Anarchist Cookbook," no
25 blueprints for any building or structure, no copies of or excerpts from the Al-
26 Qaeda training manual; and no Arabic language media, either electronic or written,
27 without prior permission from his designated Probation Officer.
28

1 14. Additional Violations of Law Can Void Plea Agreement:

2 The Defendant and the United States agree that the United States may, at its
3 option and upon written notice to the Defendant, withdraw from this Plea
4 Agreement or renegotiate its recommendations if, prior to the imposition of
5 sentence, he is charged or convicted of any criminal offense whatsoever or if he
6 tests positive for any controlled substance.

7 15. Appeal Rights:

8 Nothing in this Plea Agreement shall preclude the United States from
9 opposing any motion for reduction of sentence or other attack of the conviction or
10 sentence, including but not limited to proceedings pursuant to 28 U.S.C. § 2255
11 (Writ of Habeas Corpus). Should the conviction be set aside, reversed, or vacated,
12 this Plea Agreement is null and void and the United States may institute or re-
13 institute any charges against the Defendant and make derivative use of any
14 statements or information he has provided.

15 16. Integration Clause:

16 The Defendant and the United States acknowledge that the above stated
17 terms and conditions constitute the entire plea agreement between the parties and
18 deny the existence of any other terms or conditions not stated herein. The parties
19 agree this Plea Agreement is binding only upon the United States Attorney's
20 Office for the Eastern District of Washington, and cannot bind other federal, state,
21 or local authorities. The parties also agree that this agreement cannot be modified
22 except in a writing that is signed by the parties.

23 Approvals and Signatures

24 Agreed and submitted on behalf of the United States Attorney's Office for
25
26
27
28

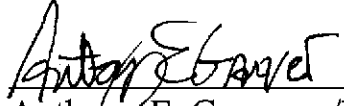
1 the Eastern District of Washington.

2
3 James A. McDevitt
4 United States Attorney

5 
6 Joseph H. Harrington
Assistant U.S. Attorney

7
8 2-15-07
Date

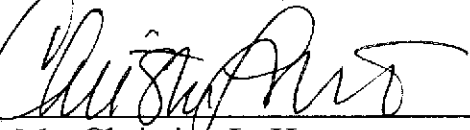
9 I have read this Plea Agreement and have carefully reviewed and discussed
10 every part of the agreement with my attorney. I understand and voluntarily enter
11 into this Plea Agreement. Furthermore, I have consulted with my attorney about
12 my rights and I understand those rights. No other promises or inducements have
13 been made to me, other than those contained in this Plea Agreement. In addition,
14 no one has threatened or forced me in any way to enter into this Plea Agreement. I
15 am agreeing to plead guilty because I admit that I am guilty. Finally, I am
16 satisfied with the representation of my attorney in this case.

17 
18 Anthony E. Garver, a/k/a
19 Anthony E. Burke
Defendant

20 02/15/07
Date

21 I, Christina L. Hunt, hereby acknowledge that I am counsel for ANTHONY
22 E. GARVER, a/k/a Anthony E. Burke, in the above titled case. I have read the
23 Plea Agreement and have discussed the contents of the agreement with my client.
24 The Plea Agreement accurately and completely sets forth the entirety of the
25 agreement. I concur in my client's decision to plead guilty as set forth in the Plea
26 Agreement. To the best of my knowledge, ANTHONY E. GARVER, a/k/a
27 Anthony E. Burke, has no viable defense to the instant charge and there is no legal
28

1 reason why the Court should not accept his plea of guilty.

2 

3 2/15/07

4 Ms. Christina L. Hunt
Attorney for the Defendant

Date